IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.273 of 1991

The State of Maharashtra .. Applicant

versus

Madhavji Govindaji Thakkar & 2 ors... Respondents

...

Mr.B.H. Mehta, APP for the State.

Mrs.V.V.Thorat i/b Mr.V.A.Thorat for the respondent no.1.

CORAM : V.M. KANADE, J

DATED : 1st December 2004.

ORAL JUDGEMENT:-

1. This appeal is directed against the judgement and order passed by the Judicial Magistrate First Class at Shahapur. By the said judgement and order, the JMFC in RCC no.689 of 1980 dated 5th December 1990 acquitted the accused of the offences punishable u/s.379, 411, 201 r/w sec.34 of the IPC and u/s.26, 41 of the Indian Forest Act punishable u/s.88 r/w sec.129

of the Bombay Forest Rules.

2. The prosecution case is that the respondent accused are partners of Vishwakarma Saw Mills which is situated at Shahapur and they were carrying on the said business under licence no.188 dated 25.4.1965. One Sirajuddin PW No.1 received information that illegal activities of cutting forest produce was going on in the saw mill and therefore, according to him, he kept a close watch on the said saw mill. On 13th April 1980, he received information that some forest produce which was illegally cut and transported from the reserve forest was being taken to the said Vishwakarma Saw Mill. He therefore raided the place at about 3.00 a.m. alongwith the panchas and several members. In the search which was taken at site, 15 logs of teak wood and one log of injaili variety was found in the saw mill. The total worth of the forest produce was Rs.3,700/-. It was further found that 9 wooden logs were cut and the evidence of such illicit cutting was destroyed and the pieces of illicit cutting of wood was found in the compound of saw mill itself. The statements of the owners of the saw mill was recorded. One Ambadas visited the Cherpoli reserve forest on 7th May 1980 and he noticed 13

stumps of teak tree and 4 stumps of injaili trees. Accordingly, the measurement of the stumps was taken and the panchnama (Exhibit-34) was prepared. A complaint was filed against the accused. The accused admitted that the seized property was found in the compound. However, they denied having knowledge about the said property and it was claimed that the said property might have been planted in the saw mill without their consent.

3. Shri Mehta learned APP appearing on behalf of the State has taken me through the oral and documentary evidence on record and also the judgement and order of the trial Court. He submitted that the trial court has erred in coming to the conclusion that the prosecution had not proved the offences against the respondent accused. He submitted that the property was found in the compound of Vishwakarma Saw Mill and therefore, a presumption was raised about the knowledge of the said property, being stolen property against the accused. He submitted that the burden was on the accused to rebutt the presumption which was raised under the Forest Act. He submitted that this presumption had not been rebutted by the respondents. He submitted that the trial court had come to the

conclusion that 7 wooden logs in the second lot tallied with edge of cutting. He submitted that having come to the conclusion that these seven wooden logs tallied with the edge of cutting, the trial Court ought to have held that the accused had not discharged the burden which was cast on them under the Forest Act.

4. The learned counsel appearing on behalf of the respondent submitted that presumption under the Forest Act would arise only after the prosecution had proved that the property in question was stolen property and was in fact illegally removed from the reserve forest. The learned counsel submitted that as long as initial burden was not discharged by the prosecution, the burden of rebutting the presumption by the accused would not arise. She further submitted that since it was not proved that the said property was either illegally removed from the forest or stolen from the forest, it could not be said that it was either a stolen property or a property which was illegally cut and taken away from the reserved forest. It was further submitted that once of the main ingredient of section 411 of the IPC was that the property in question should first be proved to be a stolen property

and secondly u/s.114 of the Evidence Act. The presumption would arise about the existence of the stolen property if it is found soon after the theft had taken place.

5. After having perused the evidence on record, I am of the view that the prosecution has miserabbly failed in proving beyond reasonable doubt that the wooden logs or the other wooden pieces which were found in the compound were either removed from a reserved forest or were illegally cut and brought in the saw mill. All the witnesses which are examined by the prosecution do not state that they had seen the accused or anyone else removing the said property from the reserved forest. they have not seen the accused or their agents or Officers felling the trees from the reserve forest. The prosecution case infact is PW no.1 Sirajuddin had received information that illegally cut wooden logs were being brought at the saw mill and accordingly, a raid was arranged at 3.00 a.m. in the morning. The trial Court in my view has rightly come to the conclusion that it was not possible to cut the wooden logs within 20 to 25 minutes after the alleged goods arrived at the saw mill. Further, it is difficult to come to a

conclusion that the wooden log found at the saw mill was the same wood which was cut from the reserve forest merely on the basis of the age the wood which was cut. Even if the age of the wood which is cut in the forest and the logs which were found in the saw mill tallies, that by itself cannot prove that the wood is the same. Thus, in my view, there is no reason to interfere with the finding recorded by the trial Court. The trial Court has given cogent reasons before arriving at a conclusion and before recording the finding that the prosecution had failed to establish its case beyond reasonable doubt. There is no merit in the appeal. There is no reason to interfere in the said order.

6. Appeal is accordingly dismissed.

V.M. KANADE, J